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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

GOOGLE INC., a Delaware corporation, Plaintiff, v. AFFINITY ENGINES, INC., a Delaware corporation, Defendant.	Case No. C 05-0598 JW (HRL) **AFFINITY ENGINES, INC.'S MISCELLANEOUS ADMINISTRATIVE REQUEST TO FILE UNDER SEAL PURSUANT TO LOCAL RULES 7-11 AND 79-5:** **(1) UNREDACTED REPLY BRIEF IN SUPPORT OF MOTION FOR FURTHER CASE MANAGEMENT CONFERENCE RE SCOPE OF BRIN AND PAGE DEPOSITIONS;** **(2) EXHIBITS 1 –10 TO THE REPLY DECLARATION OF RORY G. BENS IN SUPPORT OF REPLY BRIEF IN SUPPORT OF MOTION FOR FURTHER CASE MANAGEMENT CONFERENCE RE SCOPE OF BRIN AND PAGE DEPOSITIONS** Date: December 5, 2005 Time: 9:00 Judge: Hon. James Ware Location: Courtroom 8, 4th Floor

Dockets.Justia.com

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Civil Local Rules 79-5 and 7-11, and the Court's inherent authority over its own files and records, defendant Affinity Engines, Inc. ("AEI") files this Miscellaneous Administrative Request for an order sealing documents submitted to the Court.

Specifically, AEI requests that the Court seal the following documents:

(1) Unredacted Reply Brief In Support of Affinity Engines, Inc.'s Motion For Further Case Management Conference Re Scope Of Brin And Page Depositions

(2) Exhibits 1 – 10 To The Reply Declaration Of Rory G. Bens In Support Of Reply Brief In Support of Motion For Further Case Management Conference Re Scope Of Brin And Page Depositions

AEI's Reply Brief In Support of Affinity Engines, Inc.'s Motion for Further Case Management Conference Re Scope Of Brin And Page Depositions is being submitted for filing under seal because it quotes and references documents that Google, Inc. has designated "Highly Confidential – Attorneys' Eyes Only" under the terms of the protective order entered in the co-pending state court action. [Declaration of Rory G. Bens in Support of AEI's Miscellaneous Administrative Request to File Under Seal ("Bens Decl.") ¶ 2]. Specifically, the motion quotes and references documents, submitted as Exhibits 1 – 10 of the Bens Reply Declaration, which contain sensitive, confidential business information. [*Id.*] Google has designated these documents as "Highly Confidential – Attorneys' Eyes Only" under the terms of the state court Protective Order. [*Id.*] The parties have not yet submitted a Protective Order in the instant action, but have agreed that all materials produced in the state court action will be considered produced in the instant action. [*See* Bens Decl., Ex. 1 (filed with AEI's opening brief)] A copy of the State Court Protective Order between the parties was submitted earlier with other supporting papers to AEI's opening brief. [*See* Bens Decl., Ex. 2 (filed with AEI's opening brief)]

For this reason, AEI has submitted its reply brief in redacted and unredacted forms. In the redacted version, for public filing, confidential and sensitive information has been concealed. The unredacted version of the Motion is designated "Highly Confidential – Attorneys' Eyes Only" by AEI. AEI respectfully requests that the Court authorize the filing of the unredacted version of the Motion under seal pursuant to the terms of the state court Protective Order, to which the parties have agreed. AEI respectfully requests that only the redacted version of the Motion be filed publicly. [Bens Decl., ¶4]

The Reply Declaration of Rory G. Bens attaches as Exhibits 1 through 10, copies of documents produced by Google in the co-pending State Court Action describing sensitive, non-public business matters. [Bens Decl., ¶5] These documents has been designated by as, "Highly Confidential – Attorneys' Eyes Only" under the terms of the state court Protective Order. [*Id.*] AEI believes that all such material is, in fact, confidential, business information for which good cause exists to file under seal. [*Id.*, ¶6] For these reasons, AEI has submitted the Exhibits 1-11 to the Bens Reply Declaration for filing under seal. AEI respectfully requests that the Court authorize the filing of these materials under seal under the terms of the state court Protective Order.

For the foregoing reasons, AEI respectfully requests that the Court authorize the filing of the aforementioned documents under seal under the terms of the state court Protective Order.

Dated: November 21, 2005

Respectfully submitted,

/s/ Rory G. Bens
G. Hopkins Guy, III
Eric L. Wesenberg
Rory G. Bens
Gabriel M. Ramsey
Peter J. O'Rourke